1949.

File No. Cr. A. Bij/49

Legal Department—

A **BRANCH**

Examined

Subject:—

Criminal Appeals in the High Court Bombay against the order of the acquittals from Bijapur.

P-9 E

Cr. A. Bij. / 49

File No.

609-A

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Judgment recorded by the High Court in Criminal Appeal No. 161 of 1949 (by Government) in the case of Rex Vs. Ramangouda Venkangouda Patil No.1 and others.

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The Government Pleader for the Crown.

Counsel Messrs Purshottam Tricumdas and M.B. Vora with Mr. K.G. Datar for the accused.

....

Coram: Bavdekar and Chainani JJ.

8th July 1949.

Oral Judgment (Per Bavdekar J):

This is an appeal by the Government of Bombay against the acquittal of certain persons who were found in premises which were searched under a warrant issued by the power officer under the Prevention of Gambling Act. It is in dispute that when the search was taken it was found that people were playing cards there for money, but the defence was that even though the people did play cards there for money, as a matter of fact, there was no common gaming house; no charge was being made, and it was also suggested that outside player were not admitted.

Now, we do not wish to suggest in this case that we agree with the observations which have been made by the learned Magistrate but even though a presumption arises in this case because of instruments of gaming being found, the resumption is, in our view, rebutted by two circumstances; the sub Inspector was examined, and even though the sub Inspector refused to give the name of the informant, which he was entitled to do, he did not say that the infromant told him that any persons were making any charge. Now, it is the essential character of a commit gaming house that instruments of a gaming must be kept there for the pecuniary benifite of the keeper of the comm gaming house. Secondly, all the people who were found playing there were respectable persons; they were not

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playing in shop of one them; they were playing in the shop of some one but that someone also was a respectable person, who had got a large income, and the learned Magistrate said, therefore, that he thought it improbable that he would make any charge from people coming and playing cards there. The premises where the cards were being played were convenient premises to play cards as apparently they were not required except on certain occasions.

We, therefore, think that the learned Magistrate was right in the conclusion at which he had arrived, and dismiss the appeal.

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By the Court,

Sd/-

Assistant Registrar.

DYK/-.

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We , therefore, think that the learned Magistrate was right in the conclusion at which he had arrived, and dismiss the appeal.

.....

By the Court,

Sd/-

Assistant Registrar

DYK/-.

Judgment recorded by the High Court in Criminal Appeal No. 862 of 1949 in the case of State Vs. Basappa Parappa Ramgowda Magdum No.2.

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The Additional Assistant Goyernment Pleader for the State.
Mr. K.B.Sukhthankar, Advocate (appointed) for the accused.

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Coram : Chagla C.J. and Gajendragadkar J.

1st February 1950.

Oral Judgment: (Per Chagla J.)

Three accused were charged for having committe the murder of one Mallappa on the 27th of December 1948 at the village of Mareguddin The learned Sessions Judge, Jamkhindi, convicted accused Nos. 1 and 3 on the charge of murder and acquitted and discharged accused No. 2. The case of accused Nos. 1 and 3 came up before this Bench on the 14th November 1949 for confirmation of the death sentence and we also heard the appeal preferred by those two accused and we have set out the facts of the case in that judgment. We confirmed the death sentence passed on accused No. 1 and we reduced the sentenced passed on accused No. 3 from that of death to transportation for life. This now is an appeal preferred by Government against the order of acquittal against accused No.2.

The learned Sessions Judge in a careful and ab judgment has pointed out the discrepancies in the evidence led by the prosecution implicating accused No. 2 in the offence. One question that was agitated was whether accused No. 2 was armed with an axe or not and the learned Sessions Judge has pointed out how the prosecution witnesses have differed on this material issue. The learned Sessionx Judge then sums up what are the facts established against accused No.2 by the prosecution and these facts were that he was xxx present at the scene of the offence when accused No. 1 made

an attack on the deceased, that he run away along with accused Nos. 1 and 3 soon after the incident, and he was absconding for two days, and that he had a motive in common with the other two accused, all the three accused being brothers. From these facts the learned Sessions Judge rightly comes to the conclusion that it would nto be possible to draw the irresistible inference that there was a common intention as between accused No. and accused Nos. 1 and 3, such common intention as would attract the application of section 34 of the Indian Penal Code. The learned Sessionx Judge rightly lays down the proposition of law that if two inferences are possibl from stated facts, the inference more favourable to the accused must be drawn, and from the facts which have been found it is impossible to say that the only inference that can be drawn is as to the guilt of accused No. 2. We see no reason why we should differ from the vie taken by the learned Session Judge.

The result is that the appeal fails and the order of acquittal must be confirmed.

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By the Court,

Sd. V.R.Gadkari.

Assistant Registrar.

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Judgment recorded by the High Court in Criminal Appeal No. 662 of 1949 in the case of State Vs. Basappa Parappa Rangowda Magdum No.2.

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The Additional Assistant Government Pleader for the State
Mr. K.B.Sulakhankar, Advocate (appointed) for the accused

.....

Coram : Chagla C.J. and Gajendragadkar J.

1st February 1950.

Oral Judgment: (Per Chagla J.)

Three accused were charged for having committed the murder of one Mallappa on the 27th of December 1948 at the village of Maregudda The learned Sessions Judge, Jamkhindi, convicted accused Nos. 1 and 3 on the charge of murder and acquitted and discharged accused No. 2. The case of accused Nos. 1 and 3 came up before this Bench on the 14th November 1949 for confirmation of the death sentence and we also heard the appeal preferred by those two accused and we have set out the facts of the case in that judgment. We confirmed the death sentence passed on accused No. 1 and we reduced the sentenced passed on accused No. 3 from that of death to transportation for life. This now is an appeal preferred by Government against the order of acquittal against accused No.2.

The learned Sessions Judge in a careful and able judgment has pointed out the discrepancies in the evidence led by the prosecution implicating accused No. 2 in the offence. One question that was agitated was whether accused No. 2 was armed with an axe or not and the learned Sessions Judge has pointed out how the prosecution witnesses have differed on this material is ue. The learned Sessions Judge then sums up what are the facts established against accused No.2 by the prosecution and these facts were that he was pre present at the scene of the offence when accused No. 1 made

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The result is that the appeal fails and the order of acquittal must be confirmed.

By the Court,
Sd. V.P.Godbole.
Assistant Registrar.